

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.25519 of 2016

G.Irudayamery

.. Petitioner

-vs-

1. The Principal Account General (A&E)
Tamil Nadu, 361, Anna Salai
Teynampet, Chennai 600 018
2. The District Educational Officer
Villupuram District
Villupuram
3. The Headmaster
Government High School
Perumangalam, Kallakurichi Taluk
Villupuram District

.. Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus, directing the respondents to sanction and disburse the eligible family pension with arrears, and accrued interest to the petitioner Mrs.G.Irudayamery on account of the death of the petitioner's husband Mr.Gnanasamy, who was in service under the third respondent.

For Petitioner :: Mr.R.Prabudoss

For Respondents :: Mrs.T.S.Selvarani
Standing Counsel for R1
Mr.K.Karthikeyan
Government Advocate for R2 & 3

ORDER

Mrs.G.Irudayamery, W/o late M.Gnanasamy has come to this Court seeking issuance of a writ of mandamus directing the respondents to sanction and disburse the eligible family pension with arrears and accrued interest, on account of the death of her husband Mr.M.Gnanasamy who was in service with the third respondent.

2. Learned counsel for the petitioner submitted that the petitioner's husband late Mr.M.Gnanasamy originally joined the Military service and after his voluntary retirement as a soldier in the year 1975, he joined as O.A., in the Government High School, Perumangalam, Kallakurichi Taluk, Villupuram District, the third respondent herein. After serving in the third respondent school, her husband also retired from service with effect from 30.9.98. The petitioner's husband received pension both from the Military and also from the Education department of Tamil Nadu. Unfortunately, he died on 30.8.99 leaving behind the petitioner and her son as his legal heirs. After his demise, the petitioner applied for family pension to the Military authority and also to the first respondent through the third respondent. The Military authority rightly sanctioned the military pension. But till date, the first respondent refuses to sanction the family pension stating that a person cannot get two pensions. Since the petitioner's husband was getting family pension both for Military service and State service, after his demise, the petitioner is also entitled to get the same benefit of two pensions. Since the family pension is received from the Military authority, refusal on the part of the respondents 1 to 3 to pay the family pension for the State service is wholly unjustified and untenable. The learned counsel also submitted that in similar circumstances, this Court has passed an order making it clear that a pensioner receiving three types of pension viz., Freedom Fighter's Pension from the Central Government, another Freedom Fighter's Pension from the State Government and again Civil Service Pension for having employed in Civil Service, cannot be restricted to one pension and if it is restricted, that would amount to deprivation of the national honour bestowed upon the freedom fighters for their supreme sacrifice made to the freedom of our nation from foreign rule. On this basis, he prayed for allowing the writ petition.

3. A counter affidavit has been filed by the first respondent. The learned standing counsel for the first respondent submitted that as the petitioner's husband late Mr.M.Gnanasamy had initially served the Military service, after voluntary retirement from Military service, he had joined the civil service in the third respondent school, namely, Government High School, Perumangalam, Villupuram District and retired from service with effect from 30.9.98. Thereafter, the petitioner's husband had received the military as well as civil pension and subsequently, he died on 30.8.99. Only then, the petitioner applied for civil family pension and she was also in receipt of military pension. The civil family pension has not been sanctioned to her since, as per Rule 49(13B) of the Tamil Nadu Pension Rules 1978, a person, who is in receipt of family pension from Military side, cannot claim family pension from re-

employment in civil department.

4. But this issue has been gone into by this Court repeatedly and answered against the department holding that a person receiving family pension from Indian Army, is also entitled to receive pension from the State Government i.e., civil pension as a matter of right. While dealing with a similar issue in W.P.No.6284 of 2017 (Amalorpavam @ Amalopava Mary v. The Government of Tamil Nadu represented by its Secretary, Transport Department and others), by order dated 12.1.2018, considering Rule 49(13B) of the Tamil Nadu Pension Rules 1978, it has been held as follows:-

"4. In the aforesaid judgment, when it is held that a pensioner receiving three types of pension, namely, Freedom Fighter's Pension from the Central Government, another Freedom Fighter's Pension from the State Government and Civil Service Pension for having employed in Civil Service cannot be restricted to one pension and if it is restricted, that would amount to deprivation of the national honour bestowed upon the freedom fighters for their supreme sacrifice made to the freedom of our Nation from foreign rule. The same analogy will also equally apply to the present case inasmuch as the petitioner's husband late Gabriel, C. having employed in Indian Army, retired there from and received pension as Ex-serviceman. After his retirement from Army, he joined as a driver in the 2nd respondent Tamil Nadu State Transport Corporation and again retired from service w.e.f. 30.10.2003 and for his services rendered with the Transport Corporation, he was also paid with pension by order dated 18.12.2006. Therefore, the petitioner while receiving her family pension from Indian Army, there is no bar for her to receive the pension from the State Transport Corporation for the services rendered by her husband as a driver in the 2nd respondent Transport Corporation.

5. In view of the above settled legal position, the petitioner herein, who is the wife of late C.Gabriel is entitled to get Family Pension from the 2nd respondent as it is nothing to do with the Rule 22 of the Tamil Nadu Transport Corporation Employees Pension Fund Rules.

6. Learned Special Government Pleader appearing for the respondents also having referred to the above two judgments is unable to support the denial of the Family Pension by the 2nd respondent.

7. Therefore, in view of the aforesaid settled legal position, this Court has no hesitation to direct the 2nd respondent to pay the Family Pension to the petitioner, who is the widow of late C.Gabriel, within a period of four weeks from the date of receipt of a copy of this Order. It is made clear that the respondents are directed to release the arrears from the date of death of the petitioner's husband, namely, C.Gabriel on 02.03.2012, failing which, interest at the rate of 10% p.a. will be calculated."

5. In view of the above settled legal position, it is held that the petitioner, while receiving her family pension from Indian Army, is also entitled to receive the pension from the State Government, accordingly, in the light of the above, the writ petition stands allowed directing the respondents to sanction and disburse the family pension to the petitioner from the date of death of her husband along with arrears, within a period of four weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

ss

To

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1. The Principal Accountant General (A&E)
Tamil Nadu, 361, Anna Salai
Teynampet, Chennai 600 018

2. The District Educational Officer

Villupuram District, Villupuram

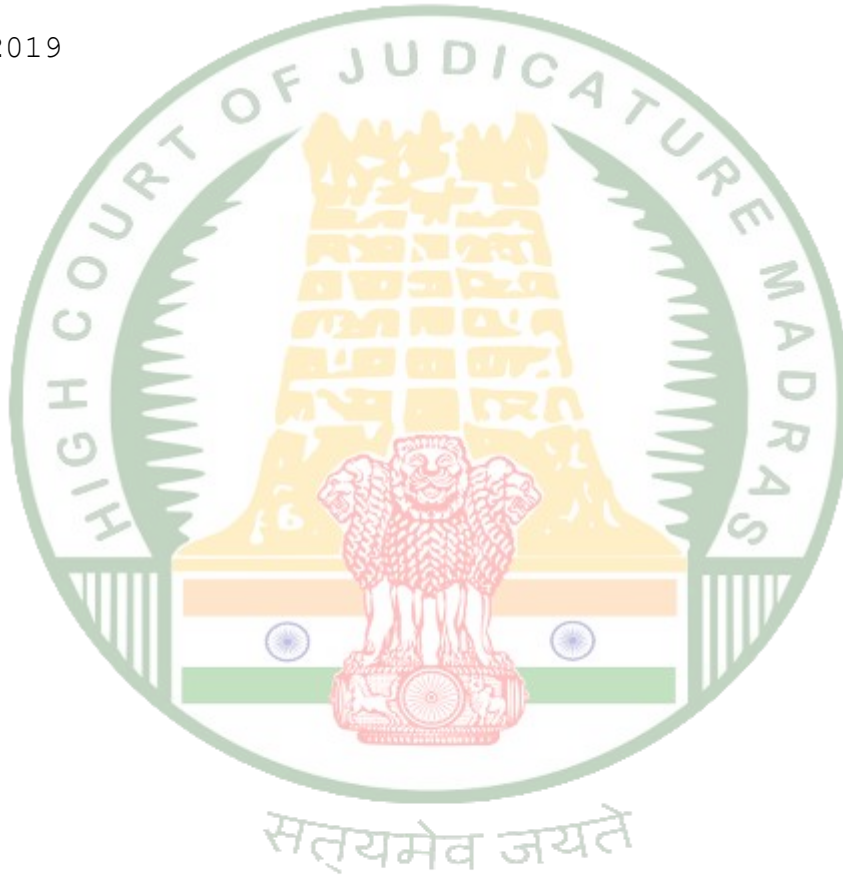
3. The Headmaster
Government High School
Perumangalam, Kallakurichi Taluk
Villupuram District

+3cc to Mr.R.Prabudoss, Advocate, S.R.No.82133

+1cc to the Government Pleader, S.R.No.82646

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MP (CO)
CS/03/01/2019



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